Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

OBJECTIVE LAW EXAMINATIONS

IN an article on "Objective Law Examinations" in the December, 1921, number of the ILLINOIS LAW REVIEW,[1] Professor Albert Kocourek gives a somewhat idealistic, and to the present writer an unconvincing, argument for that kind of law school examination where the student is to answer merely YES, NO, or—this last to a limited number of questions—O, (unanswered). The argument is largely statistical, being based on an experiment with fifty-three (53) law students, mainly, if not entirely, of the first year, in the course known at Northwestern as Chattels I, and with fifty-six (56) college students, unacquainted presumably with any but newspaper law and consisting "principally, if not entirely, of psychology students." The fifty-three (53) law students were subjected to this YES, NO, or DON'T KNOW examination, which is the "objective" or "dogmatic" examination, and also to a case-method question examination calling for reasoned answers. The non-legal college students were, of course, tested by the YES, NO, or DON'T KNOW examination only. The so-called "dogmatic examination" was by oral questions and "special" effort was made to put questions that were free from the very common drawback of "division of authority";[2] the case-method examination was by written questions. Professor Kocourek sets out the first question of the written or "ratiocinative" examination and the first five questions of the oral or "dogmatic" examination, as follows:

"Following is the first one of the list of five written questions:

"'A wrongfully cuts down oak trees belonging to B and intermingles the logs with ash logs of his own. B intentionally takes the intermingled logs out of A's possession and intermingles them with ash and oak logs of his own. C now wrongfully takes the whole lot of logs and manufactures oak chairs and ash chairs.

"'(1) What can A do about it? Explain.

"'(2) What can B do about it? Explain.'

"Following are the first five of the list of fifty oral questions:

---

[1] 16 ILL. L. REV. 304.

[2] *Id.* 309, note.

"'1. Which is the broader term, "chattels" or "personal property"?

"'2. Were chattels subject to feudal tenure?

"'3. Do chattels pass to the heir or to the executor?

"'4. May a gratuitous bailee maintain a possessory action?

"'5. Suppose that A is the owner of a chattel which he has leased to B for a year. If A retakes the chattel from B wrongfully before the end of the term, can B recover against A in trespass?'"[3]

The statistical results of the examinations are embodied in two tables: No. I, relating to the law students, and No. II, relating to the non-legal college students, called the "Liberal Arts Group." Those two tables are as follows:

TABLE No. I[4]

LAW GROUP

Grade Ratioc. Exam.			Grade Dogmatic Examination			
Rank Dogm. Exam.			Average Grade			
Rank Ratioc. Exam.			Difference in Points			
Pupil			Total Grades at Term			
A	1	4	83	82	82½	1	14A; 1B
B	2	20	82	74	78	8	14A
C	3	14	81	79	80	2	6A; 8B
D	4	45	81	62	71½	19	9B
E	5	36	80	68	74	12	4A; 7B; 1C
F	6	2	77	83	80	6	12A; 2B
G	7	7	75	80	77½	5	3A; 13B
H	8	1	73	84	78½	11	11A; 3B
I	9	5	72	82	77	10	13A; 1B
J	10	8	72	80	76	8	3A; 15B; 1C
K	11	21	72	74	73	2	4A; 9B; 1C
L	12	16	71	76	73½	5	9A; 6B
M	13	9	70	80	75	10	14B; 2C
N	14	17	69	76	72½	7	4A; 9B; 1C
O	15	26	69	72	70½	3	7B; 6C
P	16	22	68	74	71	6	1A; 13B; 2C

[3] *Id.* 309.

[4] 16 ILL. L. REV. 310, 311. The total grades stated are under the Northwestern University Law School four-letter method of marking. In general, A = excellent; B = satisfactory; C = unsatisfactory; D = failure.

TABLE NO. I (Continued)

Grade Ratioc. Exam.			Grade Dogmatic Examination			
Rank Dogm. Exam.			Average Grade			
Rank Ratioc. Exam.			Difference in Points			
Pupil			Total Grades at Term			
Q 17	23	68	74	71	6	10B; 4C
R 18	6	67	81	74	14	3A; 9B; 3C
S 19	37	66½	68	67	1½	1A; 19B
T 20	30	66	70	68	4	9B; 4C
U 21	46	65	62	63½	3	4B; 8C
V 22	27	64	72	68	8	1A; 2B; 8C; 4D
W 23	10	63	80	71½	17	5A; 6B; 3C
X 24	18	61	76	68½	15	2A; 17B; 2C
Y 25	38	61	68	64½	7	7B; 4C
Z 26	31	63	70	66½	7	1A; 13B
AA 27	11	60	80	70	20	13B; 1C
BB 28	32	60	70	65	10	6A; 4B; 3C
CC 29	29	59	71	65	12	9B; 2C; 2D
DD 30	3	58	83	70½	25	5B; 1C
EE 31	15	58	78	68	20	4A; 10B; 3C
FF 32	28	58	72	65	14	1A; 10B; 3C
GG 33	12	57	80	68½	23	1A; 12B; 1C
HH 34	24	57	73	65	16	4A; 11B; 2C
II 35	43	57	63	60	7	6B; 3C; 6D
JJ 36	33	56	70	63	14	4B; 4C
KK 37	47	54	62	58	8	3B; 3C
LL 38	19	53	76	64½	23	1A; 9B; 4C
MM 39	25	53	73	63	20	8B; 1C; 5D
NN 40	52	53	58	55½	5	10B; 4C
OO 41	13	51	80	65½	29	13B; 3C
PP 42	39	46	68	57	22	4A; 2B; 1C; 3D
QQ 43	53	45½	58	52	12½	1A; 6B; 4C
RR 44	51	42½	59	51	16½	4B; 6C; 5D
SS 45	44	42	63	52½	21	9B; 2C; 2D
TT 46	48	41½	61	51	20½	5B; 5C; 1D
UU 47	40	40	68	54	28	2B; 1C; 2D
VV 48	34	38	70	54	32	3C; 5D
WW 49	35	37	69	53	32	7C; 3D
XX 50	50	30	60	45	30	1C; 4D
YY 51	49	28½	61	45	32½	1B; 13C; 11D
ZZ 52	41	24	64	44	40	3D
AAA ... 53	42	11	64	37½	53	4B; 5D

TABLE No. II[5]

LIBERAL ARTS GROUP

Student	Grade	Class	Student	Grade	Class
1	74	Federal Board	29	50	Not stated
2	70	Not stated	30	50	1924
3	64	Commerce	31	50	1923
4	64	1922	32	50	1917
5	64	Junior	33	50	1922
6	60	1923	34	50	1924
7	60	Senior	35	50	Junior
8	60	1923	36	48	1923
9	58	1922	37	48	1924
10	58	Not stated	38	48	1906
11	56	Senior	39	48	1917
12	56	1924	40	48	1922
13	56	1900	41	48	1924
14	56	1923	42	48	Unclassified
15	56	1923	43	48	1924
16	56	1920	44	48	Sophomore
17	56	Post-graduate	45	46	1922
18	56	1922	46	46	Not stated
19	56	Unclassified	47	46	1923
20	54	1922	48	46	1923
21	54	Not stated	49	46	Unclassified
22	52	Federal Board	50	44	1923
23	52	1922	51	44	1922
24	52	1924	52	42	Sophomore
25	52	1910	53	42	Post-graduate
26	52	1922	54	42	1923
27	52	1923	55	42	1924
28	52	1923	56	40	Not stated

It will be noted that in the Law Group a student's total grades in the Law School for that semester (*i. e.*, including the Chattels I grade given the student) are stated, as well as the grades in both kinds of examinations in Chattels I. In the non-legal or "Liberal Arts Group," no information as to the student's college standing is given, except as may be deduced from his class designation as "Junior," "Senior," "Post-Graduate," "Commerce," etc. The one Commerce student may have had a little business law, but the assumption of Professor Kocourek apparently is, as certainly it

[5] 16 ILL. L. REV. 313, 314.

ought to be, that these Liberal Arts students were devoid of a knowledge of any law except newspaper law.

On the basis of the foregoing experiments, and on the seemingly unwarranted assumption that they are sufficiently representative of what normally would happen if they were tried generally, Professor Kocourek reaches the conclusion that on the whole the dogmatic type of examination furnishes a proper basis for grading students, in that it "will approximate the accuracy of ratiocinative examinations,"[6] although "A ratiocinative examination carefully prepared and graded gives a more satisfactory account in individual instances of a pupil's attainments than a dogmatic examination."[7]

For the dogmatic examination not to work injustice to individuals, however, it seems that it must be adopted in all or practically all of the courses in the law school, for "Accuracy of result by mechanical methods, *for individual cases,* can only be expected (where the qualifications of the candidates are unknown) in examinations in a group of subjects where the good fortune of the pupil in one instance will probably be neutralized by his ill fortune in another."[8]

It is not the purpose of the present writer to discuss the statistical deductions made from the tables, but simply to take issue with some of the seeming assumptions made in favor of the dogmatic examination. One assumption seems to be that the dogmatic examination system can be kept from degenerating into a farce, and is based on the supposed success of this experiment in Chattels I. The age-long game played between teachers and students, where the teacher tries to get the maximum from the student and the latter seeks to give the minimum, is a condition in law schools, as well as other schools. How young men preparing for a professional career can spend much misdirected thought in trying to get the highest possible grades with the least possible effort is a mystery, but many of them do it and will continue to do so. The so-called dogmatic examination system would be sure to break down because of that very fact.

The writer has been favored by one of the law students experi-

[6] 16 ILL. L. REV. 315.
[7] *Id.* 314.
[8] *Id.* 315.

mented upon in the dogmatic examination in Chattels I, with a comment on that examination and on Professor Kocourek's article about such examinations. Table No. I is so constructed that any student in the class and any teacher acquainted with the grades in that class could pick out Pupil B, or Student B, at once, and the comment mentioned is by Student B. Student B, who received all A's in his law school work, and who is entitled to be exempt from any suggestions that his mind is slow-moving, received only a grade of 74 in the dogmatic examination. Yet a Federal Board College student, who presumably knew no law, also received 74 in that dogmatic examination. That fact might have been urged as a reflection on teaching at Northwestern, for if a non-legal student passes as successfully a proper kind of law examination as does a law student, the natural question is whether the law teacher is not wasting his time at our school—*i. e.*, whether instruction in Northwestern is not worthless. That absurd conclusion is to be avoided only by the recognition to its full extent of the fact that the non-legal student attained his good grades through chance and that the same chance may cause the superior law student to get low grades in such an examination. The full extent of the gross injustice which may be done to individual law students, in this so-called dogmatic examination, is obscured in Professor Kocourek's article by an apparent assumption that if the individual runs such chances in twenty or thirty examinations—supposedly the normal number in a three-year period[9]—he will probably get too high grades enough times to neutralize too low grades at other times.[10] That is not a convincing probability in the case of so few examinations; if indeed it be a probability in the case of a larger number. But even that is not the worst to be said about the dogmatic examination. Much more objectionable is the fact that such an examination system would furnish an incentive to organized minimization of effort for the passing of such examination, to the detriment of serious work in the school and to a lowering of the moral tone. That is brought out in the memorandum prepared by Student B, which is valuable both as a courageous expression of student opinion and as a record of an individual student's experience. It is inserted here, for the

[9] 16 ILL. L. REV. 315, note 17.
[10] *Id.* 316.

light which it casts on the possibility of a system of dogmatic examinations in any one course, let alone all the courses of the school. Student B's memorandum, with his own footnotes, is as follows:

OBJECTIVE LAW EXAMINATIONS—VIEWS OF A STUDENT

After reading Professor Kocourek's article on "Objective Law Examinations,"[11] it has struck me that a discussion of the same subject from the student's point-of view is indispensable to a correct understanding of the whole situation. I may as well begin by confessing at once who I am, and why I am so interested in the question. I was one of the class in Chattels upon whom the experiment of two examinations, one "dogmatic" (oral) and one "ratiocinative" (written), was tried, with the results indicated in Table I of Professor Kocourek's article. As it happens, I have even been able to pick myself out of this table, although the students there are only named by letter, alphabetically. Perhaps indiscreetly, the maker of the table included a column of "Total Grades at Term." By referring to my own report of grades, and by finding that my own particular combination of hours, curiously enough, is only once found in that column, I have been able to discover that I am there under the alias of Pupil B or Student B. Still another curious happening, Student B is the subject of some especial comment because he attained second rank in the ratiocinative and only twentieth in the dogmatic examination. Very good, that was about the proportion I had expected after taking the examinations. But imagine my chagrin upon deducing my own mental characteristics from page 308. There, in the first paragraph, it is said that there are three intellectual types: "(1) those who give the best account of their talents in a written ratiocinative test where there is opportunity for considerable reflection; (2) those who do best in an oral test where the mind is stimulated by a face-to-face struggle for a mark; and (3) those who exhibit substantially the same mental form in either case. In a footnote, Student B is referred to as the shining example of type (1) and Student H as that of type (2). The next paragraph of the text goes on to say in reference to these two types: "There is room in a legal career for the slow-moving and accurate

[11] 16 ILL. L. REV. 304.

intellect as well as for the quickly-responsive and sometimes inaccurate one." This startled me, for I was unaccustomed to being called intellectually slow-moving and accurate. The whole generalization is, to my mind, just an example of the many fallacies which are likely to result from such group-tests. The examiner believed that my comparative failure in the oral examination was due to lack of time. As a matter of fact, I remember that I answered nearly every question in half the time allowed, perhaps too quickly. But I found that if I knew the answer, I knew it at once, while if I did not know, it took even less time to toss a mental coin in the air and record the record the result "yes" or "no" instead of heads or tails. The best poker-players, they say, act on the instant inspiration of Fortune.

However, the purpose of this communication is not simply to air my own grievances. As a matter of fact, I have no objection except of principle to the results of that course, for I received an A in Chattels. I have stated my own case so far for two reasons, aside from the fact that it may be amusing: first, because it shows that I am unmistakably partisan, and the reader should not err on that score; but second, because it shows that such partisanship is based wholly upon my experience with the examinations themselves and not upon anything outside. In other words, I am one of the individuals upon whom the oral examination, used alone, would work an injustice, and as such, I have a right to protest.

In discussing the general question of the advisability of adopting oral examinations, I shall not discuss at all in detail either the oral examinations as given[12] or the tables as drawn up by Professor Kocourek, but shall deal only with his conclusions. Reducing them to a few sentences, they are, in substance, as follows: Ratiocinative (written) examinations, carefully prepared and graded, give a more satisfactory account in individual instances than dogmatic examinations, but if all the courses of a law school are put upon a mechan-

[12] Much criticism has arisen among the students in regard to specific examinations given, as that questions were given that were capable of two answers, and that the system of credit was unfair. Possibly, however, those details might be smoothed out—with the grand exception of the most important cause of complaint, the tremendous part played by the element of luck. This is discussed in the next note.

ical (oral) basis individual justice is obtained on a sort of "insurance idea," because "the good fortune of the pupil in one instance will probably be neutralized by his ill fortune in another."[13] This leaving of ultimate justice to the law of averages is almost too absurd to be ventured except heavily veiled in figures and tables. Here it is propounded as the ultimate reason for adopting a new measure in a school of law, a school of that *common law* which from time immemorial has attempted to treat each case upon its own merits. Shall judges of the future proceed upon a law-of-averages idea and toss a coin in a tight case because the same litigants are engaged in several other lawsuits and "good fortune in one instance will probably be neutralized by ill fortune in another"? How many of us, except insufferable optimists, are willing even to trust to the neutrality of fortune?

However, even suppose that such a system would result in approximate justice as to the individual student's general average in all his law school courses. Even so, I have always supposed that one took individual courses somewhat for their own sake and not sim-

[13] Professor Kocourek is forced to come to this conclusion by his Table II, which, by the way, is worth close scrutiny; since it is almost the *reductio in absurdum* of his own article. This table shows the results of this same oral examination upon a group of 56 non-law students. They had not taken the course in Chattels; presumably they did not even know any law at all; yet just by guessing, one has attained 74, another 70, 6 gained from 60 to 70, and 27 gained from 50 to 60. Only 21 are below 50. Luck was certainly lavish in that round of the roulette wheel, for, needless to say, 50 is the *mean* of the law of averages in this examination. Perhaps these students did have some knowledge with which to answer the questions. If that is the way their success is explained, I cannot see exactly what I, for instance, learned from the course in Chattels, because the highest non-law man got 74 in the oral examination, and 74 is exactly the grade attained by Student B, myself. By that test, apparently, I learned nothing; but I am sure that I did learn something; my other examination showed that. However, in order to justify his teaching at all, Professor Kocourek must admit that these non-law men were simply lucky. He does admit this, but he does not dwell upon it half long enough, in my opinion. The beauty of the oral examination from the point of view of those who know little or nothing about the matter in question is that they always *can* answer, anyway, even though they have not understood the question put. And in making that answer, their chances are 50-50 that they are right. Let us hope that they do not proceed upon the same theory after they have entered practice of the law.

ply for their bearing upon one's attainment of a degree. How is the individual to have any inkling of his qualifications in an individual course if he must consider only the ultimate justice of all his grades, *in toto?*

But now let us even waive in this discussion the point of individual justice in marking, important though it is from the point of view of the student. Nevertheless, there is one obvious consideration of policy which Professor Kocourek seems to have forgotten in his discussion, and that is, that examinations exist for other purposes than for marking alone. This is particularly true in a law school, and I can best show it by tracing the inevitable result of a long-continued use of the oral (or indeed any mechanical) examinations. The problems given in the oral examination in Chattels were all found in the cases studied in that course. Moreover, there were only a limited number of problems that could be found in those cases. As anyone who has studied under the case-system knows, the actual rules of law covered in a case-book can be covered in a text-book in one-fourth the space. Moreover, the questions upon which there is any conflict, of authority or of reason, are unavailable for the oral examination, as Professor Kocourek himself explains. These are very many, and often the most interesting points. The remaining rules could be collected and codified by a few members of any class any year. They could then be produced in any required number by the device of typewritten carbon copies, or, if expedient, by mimeographing, depending upon the ingenuity and business ability of the leading spirits of the class. I may state that this is no mere dream; in all probability, it would have been done by us last year, if we had not had the written examination to prepare for at the same time. After such preparation it was superfluous. But just to give more definite reality to my picture, let me tell of an experience in another course, General Survey 1 (first half).

As a part of that course there was required a knowledge of some seven hundred legal definitions all contained in long, tiresome paragraphs in a work known as Robinson's Elementary Law. The accepted mode of preparation for an examination, which consisted of one hundred words or phrases to be defined, had been to read through some ten or twelve times this book of 692 pages. A group of students, of whom I was one, hit upon a labor-saving method.

We divided the book among us, each one making a list of short, snappy definitions of the words or phrases in his section. We then put all the lists together, made copies, and memorized the entire list of seven hundred; eac hone of us thus had only to read one-seventh of the book. We were so successful in that examination that one of us received the highest mark, 99½; six of us, together with one outsider (outside our group—how he did it was subject of great speculation to us), were the only ones above 90; while the rest of the class averaged, as I remember, about 60. To their dismay, the passing grade was raised because of our efforts to 80, and most of the students required to take the examination over again. They looked upon us an mental prodigies, but the only real mental prodigy was that one outsider who was above 90. This year, I understand, copies of our lists are available for the whole class. One does not even need a copy of Robinson, but only a good memory and a few days of work.

Now, in that examination all that was wanted was a list of definitions *memorized,* and we did what was wanted. But a list of legal rules for an oral examination is just as easy to memorize (without true memory a month later), and one can find it often in CORPUS JURIS all made, ready to be copied. Professor Kocourek may say that that is all that is wanted in *his* examinations. But then I ask why he does not at once teach the law that way. Why go through all the class discussion? Why use the case-system at all? But I am sure there is no need of questioning his championship of the case-discussion system.[14] I can remember that some of the most stimulating discussions of my first year were in this very course in Chattels, and the instructor's very method showed beyond doubt his fundamental belief in the value and importance of reasoning and discussion. In fact, he almost never spent any time upon the extraction or recital of legal rules, but rather gave us each hour a few very close hypothetical cases over which to wrangle

[14] There is no room here for a discussion of the merits of the case system. Let me just ask in this connection what good a lawyer can get from a memorized set of legal rules comparable to the analytical and logical methods given him by legal reasoning. When is he asked to answer "yes" or "no" without having looked up the matter in a book? When, indeed, is he ever asked an answer without a reason given or at least a reason known?

hotly. These were just the opposite type from the cases given in the oral examination.

Professor Kocourek may say that although he does believe in the discussion system in class-work, a dogmatic examination is still satisfactory, just for the purpose of grading. The answer is that no examination should be just for the purpose of grading. It should be likewise an incentive—even if it is only a whip. And there is no incentive to discussion and reasoning and *reading of cases* comparable to an examination in the reasoning of cases. Some students might be interested in a discussion-group class, even if they knew that they had only to memorize a list to pass the course. But those students would be interested without any examination at all; examinations exist for the indifferent majority, and if they exist at all for them, they should be effectual examinations—effectual against such indifference. This is one of the primary principles of education.

STUDENT B.

In explanation of the reference in the foregoing memorandum to the experience in General Survey 1, it should be said that the illustration, while apt as a warning of what can be done in preparation for any dogmatic examination, is no reflection on the examination in General Survey I. One purpose of that course is to make a first-year law student as familiar with legal terminology as it is possible to get him in the first six weeks in law school. The important thing is to require him to define 50 to 100 legal words or terms, out of a list of 700 defined in Robinson's Elementary Law. If he can get satisfactory definitions elsewhere, or by division of labor with his fellow students, well and good. He is getting needed legal atmosphere at the first possible moment, and the purpose of the first part of the course would seem to be served. My experience, in teaching the course on Contracts last year, was that the purpose was well served. But what was done to prepare for that definition test in General Survey I would be sure to defeat the purpose of an examination when put in operation to meet a dogmatic examination in Chattels I or in any other law school course.

In closing this article, it remains but to consider the cause of the experiment in dogmatic examinations. The drudgery of reading examination books is offered as the reason for this dogmatic oral examination. The assumption is that there is undue drudgery in

the reading and grading of examination books. I do not, of course, deny that there is drudgery, but except in the case of schools where classes are excessively large, that drudgery is not undue. There is drudgery in all lines of human endeavor, and the average law teacher pursuing the case-method undergoes much less drudgery, and does much more interesting class work, than most teachers do. At the few law schools having very large classes the drudgery of reading blue-books is doubtless undue; but in a school like Northwestern, where classes are kept within reasonable size-limits, while there is drudgery in such work, I cannot agree that it is undue in amount. But even if it were undue, that fact would not justify the use of "dogmatic" or "objective" examinations in law schools.

The ease with which undetectable signals as to proper answers could be arranged between those inclined, for a consideration or for friendship, to assist in cheating, would of itself seem to present an insuperable obstacle to the use of such examinations by bar examiners, if not by law schools.

GEORGE P. COSTIGAN, JR.

Northwestern University, Law School.